MEMORANDUM GC 94-10 September 8, 1994

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: General Counsel Priorities: Delegations to the Regional Directors and Assessing the Progress in Achieving the Priorities

In my August 3, 1994 Memorandum, "General Counsel Priorities: Follow-up to Regional Directors Conference," I described the priorities for my term as General Counsel, noting that in the near future, additional memoranda would issue that would implement changes intended to free up Regional resources to facilitate achievement of the priorities. The purpose of this memorandum is twofold: 1) to identify a number of these areas in which the delegation of authority to the Regional Directors is broadened in order to further that goal and 2) to discuss the process by which we can assess our progress in achieving the priorities on an interim basis.

With respect to the first area, the modifications in our operating procedures that follow are directly attributable to your comments and the recommendations of the three field committees that presented me with their reports in March 1994. These reports provided thoughtful and creative approaches to the problems confronting the Regions, and I wish to express my appreciation for this work. While the modifications that follow represent an important first step, we will continue to explore other suggestions made by you and your staffs, the Priorities Committee and the NLRBU.

A. CASE PROCESSING AND PERFORMANCE

1. Telephone Affidavits, Investigative Subpoenas and Fringe Benefits Collection Cases During the Term of Contract

By now, you should already have received GC Memorandum 94-8 "Telephone Affidavits," and GC Memorandum 94-9 "Investigative Subpoenas," which substantially increase the delegation of authority to Regional Directors in these two important areas of casehandling activity.

In addition, we are considering whether deferral to the courts of certain mid-contract fringe benefits collection cases may be appropriate. This is in response to the suggestion that these cases, which can consume substantial Regional resources, may be appropriately deferred, pending litigation initiated by the benefits funds in district court.

2. Paperwork Reduction

In the near future, we will communicate with you in detail regarding the results of our recent paperwork reduction review. This will eliminate the need to send many documents to Operations-Management. However, effective immediately, we have determined that the following materials need not be submitted to Operations-Management unless requested:

Complaints and Notices of Hearing
and all related amendments, consolidations, etc.

Bilateral Formal Settlements
Regional Directors are now delegated the authority to approve bilateral formal settlements on behalf of the General Counsel and to submit these settlements directly to the Executive Secretary. Unilateral formal settlements will continue to be submitted to Operations-Management for approval on my behalf. Of course, I continue to expect that you will consult with Operations-Management regarding any unusual remedial or settlement issues, and that these matters will continue to be noted in the transmittal memoranda.

Recommendations for Enforcement
The Regions no longer need to submit a copy of this document to Operations-Management, but must ensure that Enforcement Litigation receives the recommendation.

3. Agency Translations of Notices of Election

Turning to another area of casehandling, I agree that all Regions should be provided with Agency approved translations of our election notices, at least in the most frequently utilized languages, as a cost-saving device which can also contribute to the prompt conduct of an election. Apparently some preliminary efforts were made in this regard some years ago, and we are in the process of working jointly with the Board to complete the

required work so that foreign language election notice templates will be available to you.

4. Encourage Charging Parties Within a 75-Mile Radius to Present Evidence in the Region; Schedule Hearings Within 75 Miles at the Regional Office

I also agree with the suggestion that charging parties situated within a 75-mile radius of the Regional Office should be encouraged to provide their evidence within the Regional Office, subject to the exercise of the Regional Director's discretion to vary from this policy in appropriate circumstances. Further, I agree that the Directors should have the discretion to schedule hearings and trials within this same radius in the Regional Office. I understand that these techniques have been effectively used in the past, during periods of severe budgetary constraint, and I encourage you to continue the successful exercise of your discretion in this regard, recognizing the needs of each particular case. For example, an obvious exception to this approach occurs when the cost savings would be offset by the witness fees, travel and per diem of General Counsel witnesses.

Of course, under no circumstances should the reluctance or unwillingness of a charging party who resides within the 75-mile radius to come to the Regional Office be considered noncooperation. A charging party who is unwilling to present evidence in the Regional Office should be advised that the investigation may be delayed until a trip to the particular area of his or her residence is warranted, taking into account the need to coordinate travel. Eliciting the charging party's cooperation in traveling to the Board agent is also an appropriate tool when a Board agent travels away from the Regional Office to investigate a series of cases. For example, if the Board agent travels to Butte, Montana and the charging party is 70 miles away, the charging party should be encouraged to drive to Butte if the Board agent would not otherwise be near the charging party.

5. Travel Coordination/"Clustering Cases"

With respect to the coordination of travel, the Regions are to continue to "cluster" cases on a geographic basis, depending upon the particular needs of the case. In this regard, I expect that appropriate cognizance will be given to our casehandling priorities as well as the availability of evidence and the costs and benefits of clustering the cases versus making a separate trip. In addition, I also expect that assessments will be made regarding the appropriateness of the use of telephonic affidavits in such cases. To the extent that

all Regions may not be aware of our practice with respect to reporting these cases for overage purposes, I want to reiterate that the Regions may continue to report as "excused," for a one-month period, those cases which it determines should be "clustered" on a geographic basis. In reporting these cases, please identify them as: "Delayed for Travel Coordination."

6. Allowable Percentage of Overage Cases: 45-Day and Compliance

Turning to the Region's overage reports, we have already announced the increase of the allowable percentage of overage 45-day cases from 4 percent to 10 percent. In further recognition of the impact that the implementation of our priorities will have upon other aspects of casehandling, and in recognition of the significant amount of effort frequently required to explore all possible avenues of compliance, I have determined to increase the percentage of allowable overage compliance cases from 5 percent to 10 percent, effective immediately.

B. REGIONAL OFFICE STAFFING

A number of you have suggested that our existing staffing formula no longer meets all Regional Office needs, particularly in times of diminished staff resources. While this issue requires in-depth review and study, there are certain delegations that can be made immediately to ease the staffing burden in the Regions.

1. Entry Level Grade for Clerical Employees

At present, Regional Directors have the authority to hire clerical employees at the GS-4 level. Authorization for a higher-graded hire must come from Washington. Effective immediately, I have determined that Regional Directors have the discretion to hire clerical employees at either the GS-4 or GS-5 level, depending upon the qualifications of the employee and the Director's determination of the needs of the office.

2. Unpaid Student Volunteers

A number of Regions have successfully used the services of unpaid student volunteers, who, at times, earn credit hours for their work in the Regions. I agree with the suggestion that the Directors should have the discretion to utilize the student volunteer program within their Region, to the extent they wish, as long as the terms of the volunteer arrangement are in accordance with the June 1, 1982 Memorandum, "Student Volunteer Services Program." Please keep in mind that while this

memorandum was limited to law students or graduate students of industrial relations, nothing in the program prevents you from utilizing volunteers at an undergraduate level, or in other areas, particularly for work in foreign languages. You may contact Carole Coleman with any questions you may have regarding the requirements of the program.

3. Bilingual Employees and the Need for Multilingual Capabilities in the Regions

One innovative use of the volunteer program described above involves the establishment of contracts with the foreign language schools of local colleges and universities within a Regional Office city, to provide translation and interpreting experience for students and services for the Regions. While Spanish skills continue to be our pre-eminent language need, increasingly many Regions find the need for other European, Asian and African languages that are taught only at the university level. The volunteer program may provide an option by which these students receive practical translation experience and we receive volunteer translation services. It is, of course, necessary to establish the competence of volunteers to act as translators.

As you know, in carrying out our limited hiring program this year, we have emphasized the hiring of bilingual professionals, a need that many of you have identified. I agree with the suggestion that the recruitment and retention of bilingual professionals should continue to be an area of focus for the Agency in all of our hiring programs, including the co-op program, as appropriate.

4. Use of Intermittent Employees

A number of you have suggested that the Agency should consider expanding the use of trained intermittent employees for performing work such as decision writing on an as needed basis. In the past, we have employed WAEs only for the purpose of conducting elections. We have begun a pilot program, through which two experienced field employees are used, as needed, for investigations in the Monterey, California and Salt Lake City, Utah areas. We will assess the success of this pilot program and communicate with you in the future regarding the possible application and expansion of this program to other Regions.

5. Field Attorney/Field Examiner Mix on Regional Office Teams

Apparently, some clarification is warranted as to the authority of Regional Directors to determine the composition of professional teams within their Regions, i.e., whether the team should be limited exclusively to attorneys or field examiners or have both field examiners and attorneys. Accordingly, this confirms that the composition of Regional Office teams is an area within the discretion of the Regional Director, taking into account relevant factors such as the needs of the office and the career development needs of employees. The Regional Director should consult and bargain, as appropriate, with their local union over issues related to the composition of Regional Office teams.

C. ASSESSING OUR PROGRESS IN ACHIEVING THE PRIORITIES

The items discussed above are intended to increase your ability to respond to the varying and, at times, conflicting needs of your Region and to facilitate your achievement of the priorities. A number of you have asked how we will assess our progress in achieving these priorities, and how we will know how well we are doing.

As I have stated previously, I view the next several months as a period during which we will need to work together closely to see how the priorities actually function in the context of the day-to-day work in your Region. I plan to use this period to listen to your experiences, both good and bad, and to learn from your successes and frustrations. I understand that this period of transition holds uncertainties for us all. As much as we share a common view of the importance of these priorities, we also share a concern as to how we can best achieve these goals without sacrificing the principles of quality and timeliness which form the foundation of our success. While we continue our efforts to achieve additional resources for the Agency, the problem remains as to how to make our priorities "fit" into the real world of the Regions, with your all-too-limited resources, and how to assess our progress.

Traditionally, we have operated with a system of specific and tangible measures of our performance. Now, however, "output and outcome based" measurement is a requirement for all Federal agencies under the Government Performance and Results Act. Our established system of performance measurements gives us a head start in measuring our effectiveness based on what results we produce (output) as opposed to simply measuring the number of cases or "inputs" we receive. In the near future, we

will need to examine all of our measurements with the object of ensuring that they measure performance that is relevant to the public we serve. Success in implementing the priorities will certainly be considered in evaluating performance during this period, but I think it is premature at this time to articulate any new specific standards of performance, with the exception of the overage adjustments already described. Of course, before we implement any specific changes in the way in which we measure or evaluate performance, we will discuss with you, other affected groups and the Agency Partnership Council.

During the next several months, we need to gather experience and data as to the achievement of the priorities, particularly in the representation and injunction areas, and as to the impact of these priorities upon the other aspects of your case processing, before any new standards can be introduced. I want to emphasize that during the next several months, my central concern is the effort and creativity that you bring to this task. The innovations that you bring to this effort will be informed by your experience and knowledge as to how to make the Act work. Obviously, innovation is not risk-free, and some mistakes will be made. We will work to derive the benefit of learning from our mistakes, and to recognize and share in our successes. To this end, I intend to communicate, on a frequent basis, Regional casehandling successes, for example, a successful 10(j) litigation, significant settlement, or post-election resolution.

Finally, just as we are concerned about the outcomes of these priorities, and how we will assess our progress, so too are our employees. The NLRBU has expressed to me, on behalf of the field employees it represents, its support of the notion that some cases warrant more attention and priority than others. At the same time, the NLRBU has insisted that, without more resources being available, placing more priority on some work necessarily means placing less priority on other work. The Executive Committee of the NLRBU has conveyed its belief that too often our current measures of success, particularly "time targets," are viewed, and used for evaluative purposes, as ends in and of themselves. They fear that giving you flexibility to implement the priorities while the current performance measurement system remains in effect will not work. It is their view that, absent some significant changes in our performance measurements, the priorities translate into little more than additional pressure on our employees at all levels, to do more with the same, limited resources while being subject to the same time targets. These concerns will be an important consideration in our examination and reassessment of performance standards.

I note that the rules for appraising the performance of our employees require us to consider relevant extenuating circumstances, such as a large volume of work, staffing problems, cases delayed to coordinate travel, and unusual casehandling mix. The reassignment of employees to priority tasks that prevent them from otherwise timely completing other assignments will clearly be such an extenuating circumstance. So too, an increase in workload to employees, caused by the reassignment of cases to permit other employees to focus on priority assignments, should also be considered as an extenuating circumstance. In evaluating performance, we must demonstrate to our employees that we have the flexibility and willingness to recognize inhibiting circumstances that limit their ability to process their cases within the time goals. This is extremely important if our efforts to secure the active support of all employees in achieving our objectives are to be successful. Your exercise of sound judgment in this area will be an essential part of making the priorities work.

I encourage you, once again, to communicate with me and my staff in Operations-Management regarding your experiences with our priorities and with the exercise of your expanded discretion in the next several months. We can benefit from your experiences and share that benefit with the rest of the field. At the same time, we will continue to explore ways in which we can further reduce impediments to efficient casehandling and other burdens on you and your staffs.

FF

F. F.

cc: NLRBU

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 94-12 September 26, 1994

TO : All Regional Directors, Officers-in-Charge, and Resident Officers

FROM : Fred Feinstein
General Counsel

SUBJECT: Press Relations

On April 22, 1994, in Memorandum GC 94-4, Regional Directors were given the authority, in the exercise of their sound discretion, to issue press releases describing Regional casehandling activity of significance. Several Regional Directors regularly issued press releases prior to Memorandum OM 91-98, and they have already resumed doing so.

In my view, it is vitally important for the business and labor-relations community, and the public to be aware, not only of the existence of the National Labor Relations Act, but of its vitality as well. The Act has withstood the test of time as the preeminent statute protecting the rights of employers, employees, and labor organizations. As we approach the Board's 60th anniversary, the message that we continue to vigorously and sensitively enforce its provisions should be communicated. It is equally important that our message reach those who desire to exercise their rights under Section 7 of the Act as it is those who would violate the law. Public awareness of our activities may also serve as a deterrent to unlawful conduct, and as an incentive for settlement.

Accordingly, as you administer the Act by issuing complaints, filing Section 10(j) and 10(l) petitions, achieving settlements, issuing decisions and conducting elections, please identify those events that are newsworthy and, either by press release or a copy of the document, provide the information to the appropriate news organizations in your Region. Manifestly, some stories will be of interest solely to the local newspaper in the area of the activity, while others will have significance in the larger metropolitan areas and media markets. If you have not already done so, the Region should establish a positive working relationship with local reporters, so that they will feel comfortable in asking questions and relying upon the accuracy of the information transmitted to them and also be better informed about our responsibilities. You should maintain a listing of the names and addresses, phone and fax numbers of reporters who cover the labor beat in your jurisdiction so that material can

routinely be supplied to them. Copies of your lists, once they are compiled or updated, should be sent to the Division of Information so that they can enlarge their current database. You may wish to designate a particular individual to be responsible for preparing press releases and responding to requests for specific information, but the Regional Director retains responsibility for substantive communication with the media. See Memorandum 74-59, dated September 23, 1974. Press releases may contain an "embargo date or time" in order to ensure that the parties receive notification of your action before it is published in the newspaper or broadcast by the news media.

We have attached to this memorandum several sample copies of press releases which have issued either from Washington or from other Regional Offices concerning newsworthy events. In each instance, the release supplies sufficient information, including a quotation for attribution, which will enable the reporter to write a fairly complete story. Recently, we have added the names of the Regional personnel who were primarily responsible for the case, in addition to the Regional Director, and as set forth in Memorandum GC 94-4, I request that you do so as well.

David Parker, the Director of the Division of Information, stands ready to assist you in preparing press releases, in reaching out to the press, and in developing an ongoing relationship with the media. You may wish, for example, to set up regular press briefings, and establish a mechanism for conducting special briefings or press conferences on short notice. The establishment of a relationship with the press and the development of a rapport with them can be an important component in ensuring that our message is communicated both fairly and accurately. The upcoming 60th anniversary presents an excellent opportunity to showcase the Board, and its staff, particularly during Public Service Recognition Week, which occurs in May. No governmental agency has a better grouping of highly skilled and dedicated individuals on its staff, and our availability to the public is an important means to further the policies and objectives of the Act.

Please be sure to fax copies of any press releases issued, including Section 10(j) injunction cases, to the Division of Operations-Management so that they can deal with the national media, or answer questions that are addressed to them. Operations-Management also will provide copies to the Division of Information. Please continue, of course, to send in copies of any local news articles or letters to the editor that involve the Agency, to the Division of Information for inclusion in the Daily Labor News. You should feel free, in appropriate circumstances, to respond to [illegible] to the editor [illegible].

In sum, please consider as one of my priorities bringing to the attention of the public significant events involving the work of this Agency. The dissemination of accurate information about our work is clearly in the public interest, and will assist us in accomplishing the Agency's mission. It also will help to acknowledge the efforts of our hardworking staff.

FF

F. F.

Attachments

cc: NLRBU

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE **(R-2012)**
11 a.m., Tuesday, September 13, 1994 **202/273-1991**

Statement by NLRB General Counsel Fred Feinstein on $30 Million Backpay Settlement of 1987 National Football League Players' Strike Litigation

As General Counsel of the National Labor Relations Board, I am pleased to announce the settlement of litigation arising out of the National Football League's 1987 players' strike. The settlement agreement includes $30 million in backpay, bonuses, and interest to be distributed to over 1,300 players, who participated in the strike. The $30 million constitutes the largest backpay award in the history of the National Labor Relations Board.

The litigation arose in 1987, based upon charges filed with the agency by the National Football League Players Association. The central charge alleged that the League Management Council and the teams had unlawfully refused to allow returning striking players to participate in the games immediately following the end of the strike. The trial, lasting over a year and a half, began in March 1988, culminating in a decision issued by the Board in September 1992. The Board found that the denial of the returning strikers the right to play or be paid, as well as other acts by League management, such as the withholding of game checks for certain injured reserve players, constituted unfair labor practices in violation of the National Labor Relations Act.

The significance of this settlement is that it underscores the fundamental principle that when the law is violated we will enforce it fully and fairly. This is not about sports per se, it's about protecting the rights of employees to engage in collective bargaining, irrespective of the type of work they perform.

The negotiations leading to the $30 million settlement negotiations were conducted by Baltimore Regional Supervisor and lead Trial Attorney Eric Fine, Deputy Assistant General Counsel of the Appellate Court Branch Howard Perlstein, and Baltimore Compliance Officer Elizabeth Tursell and Compliance Supervisor Shelley Korch. The Baltimore Regional Office is currently in the process of finalizing the procedures for distributing the backpay checks. The backpay distribution is expected to occur within the next couple of months.

I wish to express my thanks to the National Football League Players Association, to the League's Management Council, and to the agency personnel for their cooperation and efforts in bringing this matter to a successful conclusion.

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NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE **(R-2010)**
Friday, September 9, 1994 **202/273-1991**

FEDERAL COURT IN CALIFORNIA GRANTS NLRB PETITION FOR BARGAINING ORDER AT NEW BREED LEASING CORP.

The National Labor Relations Board has obtained a temporary injunction from a federal district court in California ordering New Breed Leasing Corp. to recognize and bargain with the International Longshoremen's and Warehousemen's Union (ILWU) and its Locals 13 and 63, in separate bargaining units of longshore and clerical employees.

The court also ordered the company, a service contractor operating the U.S. Army container freight station at Compton, California, to offer positions to employees of the former contractor, Maersk Pacific Limited, which had a collective bargaining agreement with the ILWU, and to restore the conditions of employment which had prevailed at Maersk.

This relief was based on a showing that the Board had demonstrated a "strong likelihood" of success in the underlying administrative proceeding now pending before the Board that New Breed had violated the National Labor Relations Act. The injunction petition alleged that New Breed had unlawfully failed to hire Maersk employees for its workforce, and that it was a successor employer, for labor law purposes, to Maersk.

Pursuant to the August 22, 1994 order from U.S. District Court Judge A. Wallace Tashima, Central District of California, New Breed was ordered to offer former employees of Maersk their former or substantially equivalent positions; to recognize and bargain, upon request, with the ILWU; and to restore the wages, hours and other terms and conditions of employment which prevailed with Maersk, and maintain those conditions pending good faith negotiations with the ILWU. Approximately 12 former employees of Maersk are covered by this order. Judge Tashima's order issued pursuant to Section 10(j) of the National Labor Relations Act, which authorizes federal district courts to grant temporary injunctive relief to maintain or restore the lawful status quo pending the Board's adjudication of the unfair labor practices.

On August 24, 1994, the Judge denied New Breed's motion for a stay of the injunction pending their appeal to the U.S. Court of Appeals for the Ninth Circuit, but issued a temporary stay until September 7, 1994, to allow New Breed to move the Circuit for a stay pending appeal. On September 7, the Circuit Court denied the company's motion for a stay. The company's appeal is pending.

NLRB General Counsel Fred Feinstein commented:

"This case demonstrates the effectiveness of Section 10(j) for giving prompt relief to employees who are adversely affected by unfair labor practices. The judge's decision restores employees to their former positions and working conditions, and restores the bargaining relationship, pending administrative proceedings on the unfair labor practice complaint.

"I am pleased that the court agreed with our request for interim relief. Because New Breed has a fixed-term service contract, the normal administrative remedies may well occur too late to provide meaningful relief to the affected employees."

General Counsel Feinstein has placed a priority on identifying appropriate injunction cases and moving them expeditiously into the courts. Since taking office in March, the Board has authorized him to file 57 Section 10(j) petitions with a success rate of 85 percent, consistent with the historical rate.

The case arose when New Breed was awarded a two-year service contract at the Compton facility, effective April 1, 1994. Maersk had operated that facility for several years, during which time it had a collective-bargaining agreement with the ILWU. New Breed hired its own workforce, without considering the ILWU-represented employees of Maersk; established its own terms and conditions of employment for these new employees; and declined to recognize the ILWU. NLRB's Region 21 in Los Angeles had issued an administrative complaint against New Breed, in May 1994 alleging the above actions to be unlawful. The complaint is scheduled to be heard before an NLRB administrative law judge on September 26, 1994 in Los Angeles.

The region's complaint seeks a bargaining order under the authority of the Supreme Court's decision in NLRB v. Burns International Security System, Inc., 406 US 272 (1972) in which the Court held that under certain circumstances a successor employer will be required to recognize and bargain with a union which enjoyed majority support among the predecessors employees.

Commenting further on the New Breed case, General Counsel Feinstein said:

"I want to commend the fine work on this case by Region 21 Field Attorneys Frank Wagner, who presented and argued the matter in court, and Jean Libby, who investigated the case and prepared the injunction papers, as well as the dedicated efforts by the other staff members in the region and in Washington who assisted with the case, including the clerical staff which prepared and served the necessary documents."

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NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE
Friday, September 9, 1994

(R-2009)
202/273-1991

NLRB ANNOUNCES INTENT TO ISSUE COMPLAINT AGAINST LA CONEXION FAMILIAR, A SUBSIDIARY OF SPRINT, OVER CLOSURE OF ITS SAN FRANCISCO FACILITY

The San Francisco office of the National Labor Relations Board announced its intention to issue an unfair labor practice complaint against La Conexion Familiar (LCF), a subsidiary of Sprint, alleging that the company violated the National Labor Relations Act (NLRA) by closing its San Francisco facility on July 14, 1994 in response to employees' organizing efforts on behalf of the Communications Workers of America (CWA).

LCF, with a workforce of over 200, was engaged in marketing long distance telephone services to the Spanish-speaking community, and has asserted that its closure was due to economic reasons.

San Francisco Regional Director Robert H. Miller, in announcing the decision, stated:

"After careful consideration of the evidence, we have concluded that there is sufficient evidence to establish that La Conexion Familiar closed its facility because of the ongoing union activity. We have asked the company to consider a settlement, which would include reopening the facility and restoring employees to their former positions. Absent settlement, the region will issue a formal complaint on September 12, placing the matter for hearing and decision before an Administrative Law Judge."

The region's investigation also revealed over 50 separate incidents of employer conduct deemed violative of Section 8(a)(1) of the NLRA, which prohibits interference with employees in their exercise of their rights to engage in union activity. This conduct, included, among others, unlawful interrogation of employees concerning their union activities; threats of reprisal, including closure of the facility; surveillance of union activities; and the promise and granting of benefits to discourage union activity.

The region's investigation was conducted pursuant to an unfair labor practice charge filed by the CWA. At the time of the closure, LCF employees were scheduled to vote in a July 22, 1994 NLRB election to determine whether to be represented for collective bargaining purposes by the CWA.

The CWA has also requested that the agency seek injunctive relief under Section 10(j) of the Act, which authorizes federal district courts to grant temporary injunctive relief to maintain or restore the lawful status quo pending the Board's adjudication of the unfair labor practices. The determination whether to seek such relief is made by the five-member Board in Washington, upon recommendation of the agency's General Counsel.

NLRB General Counsel Fred Feinstein commented as follows:

"The CWA's request for injunctive relief to reopen the facility and restore the employees' positions is under active consideration, as we await word on settlement. This is consistent with my policy of expeditiously seeking interim relief, where appropriate, for employees who are adversely impacted by alleged unfair labor practices."

General Counsel Feinstein went on to say:

"I would also like to recognize the excellent work of Regional Director Miller and his staff on this case, including Field Attorney Leticia Pena and Field Examiner Craig Wilson, who conducted the investigation, Field Attorney Jonathan Seagle, who did legal work, and Regional Attorney Joseph Norelli, Deputy Regional Attorney Robert Buffin, and Supervisory Examiner William Engler, who, under the overall direction of Mr. Miller, supervised the investigative and legal work."

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NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE
Friday, September 2, 1994

(R-2007)
202/273-1991

NLRB SUCCESSFUL IN SEEKING REIMBURSEMENT OF AGENCY EXPENSES IN A RECENT CASE

In NLRB v. A.G.F. Sports LTD., 146 LRRM 3022, the United States District Court for the Eastern District of New York ordered the agency to be reimbursed for attorney fees at the prevailing market rate of $150.00 per hour. In this case the Employer refused to produce voter eligibility lists pursuant to a decision by the National Labor Relations Board calling for single employer elections at each of the Employer's companies. The Court also allowed expenses for the salary of the Board Field Examiner's attendance at both a conference with the Employers and at the Board hearing. The Court accepted the agency's time records in awarding the full amount requested.

General Counsel Fred Feinstein said, "I am pleased that we have prevailed in seeking reimbursement for our costs from persons engaged in conduct violative of the National Labor Relations Act. This very significant case demonstrates that any delay in our election process resulting from a refusal to provide a voter eligibility list will be expensive."

The Brooklyn Regional Office achieved this important decision for the agency. Field Attorney Elias Feuer as well as Field Examiner Ariella Bernstein are the individuals most directly involved in achieving this result.

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NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE
Thursday, August 25, 1994

(R-2006)
202/273-1991

EIGHTH CIRCUIT ORDERS MINN-DAK FARMERS CO-OP TO BARGAIN WITH AFGM

The United States Court of Appeals for the Eighth Circuit has issued a decision enforcing an order of the National Labor Relations Board directing Minn-Dak Farmers Cooperative of Wahpeton, ND, to recognize and bargain with the American Federation of Grain Millers (AFGM) Local 405. The court found that Local 405 became the collective bargaining agent of the Cooperative's employees during the summer of 1991 and the Cooperative's refusal to bargain with Local 405 since August then constituted an unfair labor practice. Circuit Judge Frank Magill of Fargo, ND, and Senior Circuit Judges Floyd R. Gibson and John R. Gibson joined in the unanimous decision.

Minn-Dak had bargained for many years with an independent union consisting solely of its own employees. The employees voted to affiliate with AFGM in early August 1991. Minn-Dak refused to recognize the affiliation on the stated grounds that the employees failed to comply with the constitution and bylaws of their own association in conducting the affiliation, and that the affiliated union was a substantially different entity than the one with which Minn-Dak had agreed to bargain.

The AFGM and Local 405 filed unfair labor practice charges protesting Minn-Dak's withdrawal of recognition with the NLRB's Regional Office in Minneapolis, MN on January 10, 1992. The NLRB in Washington, DC upheld the charges in a decision issued on May 28, 1993. The NLRB concluded that the affiliation vote was conducted with sufficient procedural safeguards to ensure that it reflected the will of the employees involved and that the

institutional changes resulting from affiliation were not so great as to relieve Minn-Dak of its legal obligation to continue bargaining with the employees' representative. The Eighth Circuit's decision, entered on August 22, agrees with those conclusions.

The Minneapolis Regional Office of the NLRB has jurisdiction over cases arising in North and South Dakota, Minnesota, most of Iowa, and western Wisconsin. The AFGM's and Local 405's charges were investigated and presented to the NLRB by Field Examiner Floyd M. Child and Attorney Joseph Henry Bornong, both of Minneapolis. The case was argued before the Eighth Circuit by William A.. Baudler of the NLRB's Appellate Court Branch, Division of Enforcement Litigation in Washington, DC.

For More Information Call:
Ronald M. Sharp, Regional Director
NLRB Region 18, Minneapolis, MN
(612) 348-1799

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NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE
Monday, August 15, 1994

(R-2004)
202/273-1991

N.C. COURT GRANTS NLRB INJUNCTION REQUEST FOR BARGAINING ORDER AT JACK GRAY TRANSPORT

The National Labor Relations Board has obtained a temporary injunction from a federal district court in North Carolina, ordering Jack Gray Transport, Inc of Greensboro to recognize and bargain with International Brotherhood of Teamsters (IBT) and to immediately offer reinstatement to 11 discharged employees.

The bargaining obligation was based upon a showing that a majority of the employees signed union authorization cards designating IBT Local 391 to represent them and bargain collectively on their behalf. The NLRB obtained the injunction under Section 10(j) of the National Labor Relations Act, which empowers it to petition a federal district court for injunctive relief to temporarily prevent unfair labor practices and to restore the status quo, pending full review of the case by the five-member Board. Judge N. Carlton Tilley, Jr. of the U.S. District Court for the Middle District of North Carolina issued his order in open court on August 8.

Since becoming General Counsel in March, Fred Feinstein has established as a priority identifying appropriate injunction cases such as this one so that employees are granted interim relief while the case is adjudicated before the NLRB. With the Board's authorization, the General Counsel has sought Section 10(j) relief in 47 cases, with a success rate to date, including settlements, of 91 percent, consistent with the historical rate.

General Counsel Feinstein stated: "We have asked our Regional Directors to identify all cases where injunctive relief is appropriate, to immediately investigate them, and then to bring them to my attention. I am pleased that Judge Tilley agreed with our position that an interim bargaining order was warranted here and that the 11 Jack Gray Transport employees who were unlawfully terminated for union activity should be reinstated immediately while the case is litigated before the NLRB."

Mr. Feinstein praised the work of the Winston-Salem, N.C. Regional Office staff in handling this case, especially litigation attorneys Patricia Timmins and Jasper Brown. He also commended attorney Karen Thornton, in the Division of Advice, Office of the General Counsel. Meanwhile, in an administrative proceeding before the Board, the Regional Office is seeking permanent reinstatement and full backpay for the discharged employees, an affirmative bargaining order on behalf of IBT Local 391, and a permanent cease-and-desist order.

The case arose when Jack Gray Transport employees sought representation by the Teamsters in early 1994. The company is in the business of transporting steel, iron and refuse. The NLRB complaint alleged that once Jack Gray Transport learned that the employees were supporting the Teamsters, management officials threatened them with loss of jobs unless they withdrew their support for the union; interrogated employees to determine their union sentiments; promised employees benefits if they would discontinue their support for the union; and discharged or laid off 11 of their 18 employees because they supported the union.

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